DOCUMENT RESUME

ED 070 294 EM 010 587

TITLE	Guidelines for Access: A Report by NCTA.
INSTITUTION	National Cable Television Association, Inc., Washington, D. C.
PUB DATE	Aug 72
NOTE	13p.
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	Broadcast Industry; *Cable Television; Citizen Participation; Community Action; Federal Government; *Federal Laws; Federal Legislation; *Programing (Broadcast)
IDENTIFIERS	FCC; *Federal Communications Commission

ABSTRACT

Cable Television operators must fulfill the new (1972) Federal Communications Commission's requirements that cable systems provide non-broadcast designated access channels for public, educational, government and other uses. Because of the varying requirements for each of the four categories of access channels, each is reviewed separately here. The specific requirements are listed as well as additional stipulations on production costs, production facilities, formats and allocations and copyrights. The guide acknowledges the fact that no one has a great deal of experience in dealing with these types of access requirements and therefore takes a general approach in presenting the issues and problems that should be met. (MC)

ED 070294

FILMED FROM BEST AVAILABLE COPY

Guidelines for

access

a report
by
NCTA

EM 010 587

August, 1972
The National Cable Television Assn.
918 16th St., NW
Washington, D.C. 20006

ED 070294

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
OFFICE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY

Guidelines for

access

a report

by

NCTA

August, 1972

The National Cable Television Assn.
918 16th St., NW
Washington, D.C. 20006

The Federal Communications Commission's new rules for cable television pose a new challenge for the cable television industry and for the public. The requirement that cable systems provide non-broadcast designated access channels for public, educational, governmental and other uses begins a significant new aspect of broadband communications services.

This report offers guidelines to cable operators to help them fulfill the FCC's requirements. At the outset it should be clear that it is not possible or even desirable for us to establish detailed recommendations for the operation and development of these new services. The local and unique needs and capabilities of the cable operator and his or her community precludes such advice. This report, then, takes the general approach – identifying what types of operating rules must be set, pointing out issues and problems that should be met, suggesting possibilities and in some cases offering parameters. We are also recommending that systems establish interim operating rules for a specified period of time – six months or a year, for example. At the end of that time a complete review of the rules in light of actual operating experience should be undertaken.

Because there are varying requirements for each of the four categories of designated access channels, we have treated each category separately. (Problems concerning accountability for libel and liability insurance are not treated here; these matters are under separate study.)

If the concept of public access is to work for the cable operator and the community – for all groups and individuals concerned – there must first be a realization by all that these are largely uncharted waters. No one has a great deal of experience upon which to build. The FCC itself has purposely offered only general guidelines.

Success will not come overnight. For the access concept to develop meaningfully, flexibility, persistence and perhaps most important, sincere, honest and realistic efforts at cooperation will be required of all concerned.

President
National Cable Television Association

Application of rules

The FCC's access requirements apply to cable television operators as follows:

> *All systems located wholly or partially within a top-100 television market which began or begin operations on or after March 31, 1972.*
>
> *Systems already operating in the top-100 markets have until March 31, 1977 to comply. However, such systems providing any of the access services prior to that time must comply with FCC requirements (1) barring operator control over program content (2) assessment of costs and (3) the operating rules. Systems receiving certificates of compliance to add television signals to their operations prior to the March 31, 1977 date must comply with the access requirements, by adding one specific access channel for each broadcast added. Priority for adding channels is public access, first; educational, second; government, third; leased, fourth.*
>
> *Systems located wholly outside major television markets cannot be required by a local entity to exceed the FCC's access requirements. However, if such a system does provide any access service, it must comply with the requirements.*

The FCC is aware that the requirements may impose undue burdens on some cable operators. In such cases, the operator may request a waiver. Cable systems operating in small communities within a major market, to whom the access requirements present a burden, are free to meet their obligations through joint building and related programs with other cable operators in the larger core areas.

Activation of additional access channels

The FCC has required that when use of the designated access channels reaches a specified point, additional channels must be activated to meet the demand. The commission's formula for expansion of access channel capacity is:

> *Whenever all of the designated access channels (public, educational, local government, or leased) are in use during 80 per cent of the time during any consecutive three-hour period for six consecu-*

tive weeks, a system shall have six months in which to make a new channel available for any or all of the above described purposes.

The Public Access Channel

There are six general FCC requirements related to the public access channel. (1) The system must maintain at least one such non-commercial channel. (2) At least one public access channel shall always be free. (3) The system must maintain and have available for public use at least minimal equipment and facilities necessary for the production of programming. (4) The system may assess production costs for live studio presentations exceeding five minutes. (5) The system may not exercise any control over program content (except as mentioned below). (6) Finally, the system must establish operating rules for the channel. A copy of the rules must be filed with the FCC within 90 days of the date of activation of the channel. A copy of the rules must also be available for public inspection.

Operating rules

The system's operating rules must specify the following:

Access is to be first-come, first-served, non-discriminatory.

A prohibition on the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office).

A prohibition on the presentation of any lottery information (as in the cablecasting rules).

A prohibition on presentation of obscene and indecent matter (as in the cablecasting rules).

Permission of public inspection of a complete record of the names and address of all persons or groups requesting access time. (The record must be retained for two years.)

Those are the specific requirements levied by the FCC. In

your published operating rules you will want to deal with other factors, as well.

Production facilities

The FCC requires cable operators to have "at least minimal equipment and facilities necessary for the production of programming." We believe that where economically feasible, provision should be made for a studio in good operating order with at least two cameras, two video tape recorders and the basic attendant studio equipment (lighting, etc.). Beyond this, the amount and type of equipment should be a function of demand. The equipment should be in good operating condition, providing a level of technical quality consistent with the user's offering. Experience thus far indicates it is important to have as high a level of technical quality as possible, in order to attract and maintain the interest of viewers accustomed to good quality. The cable operator may require reasonable technical standards in software submitted by a user. Provision should also be made for the system to provide a qualified television production person to offer technical assistance during reasonable business hours.

Although the commission is requiring that a system have production facilities available, it also expressed the hope that "colleges and universities, high schools and recreation departments, churches, unions and other community groups will have low cost video taping equipment for public use."

Production costs

FCC rules stipulate that you may *not* charge for costs incurred in live studio presentations of less than five minutes. Beyond that, production costs are chargeable to users. With respect to the latter, the FCC has said that production costs and any other fees for use of other public access channels "shall be consistent with the goal of affording the public a low cost means of television access." In compliance with the spirit of that directive, we believe charges to users of production facilities should be limited to actual costs incurred, whenever possible. Basic rates should be set and published in the operating rules.

Formats and allocations

The basic criteria for most decisions in public access should be supply and demand. However, in some cases, cable operators may want to set aside certain days and times to deal with "regular" access offerings and with "one-time" access presentations. There is advantage to the operator, to the user, and to the viewer in permitting at least a limited degree of regularity. But this should not be structured so as to interfere with the one-time user's right to access.

First, the operator will want to establish a reasonable "broadcast day." He may want to require that applications for channel time be made in advance: for example, one or two weeks. (Such a requirement could and should be waived if no demand exists for available time.) Applications should specify, among other things, requested time and date, program length, purpose of program, persons appearing in program, method of presentation, requirement for studio facilities, etc.

Operating rules might specify limitations on regular and one-time use. For example, a limit on the number of hours of prime time per week per user, a limit on the total number of hours per week, or even a limit on the length of time a user can receive a particular time block. However, limitations on access time should relate to demand. If demand is slight, limitations should be minimal. If demand is heavy, limitations may be more severe. The guiding principle should be to give access to the greatest number of users.

Copyright

Operating rules should specify procedures to insure that copyright clearances have been obtained. To relieve the system from copyright liability, rules could require each user to furnish appropriate documentation that, where copyrighted material is included in the program, clearance has been obtained. The simplest method would be to require written proof of clearance for both music and non-music copyrighted material. In the case of music, the operator might require the user to furnish the title of the music to be used, the name of the composer(s) and the licensing agent for performance rights, and documents authorizing performance. For non-musical material, information should include the name of the author, the copyright owner, and again, documents authorizing use of the material on the program.

Other requirements

There are other issues for which you may want to consider appropriate operating rules. You may want to include a provision dealing with the use of access facilities by minors. You might require that any minor using the access facilities be accompanied by an adult, who would assume legal responsibility for the actions of minors and also for obtaining documents required for use of the access channel.

You might include a provision requiring access users to provide to the cable system any information necessary for the system to meet FCC requirements. Finally, you will probably want to outline procedures to follow if disputes or grievances develop over program content, technical standards, etc.

Promotion of access

Early experience with public access channels has demonstrated that promotion is an extremely important factor in the healthy development of the access concept. The cable operator should involve himself in the promotion and development of the public access channel. Cooperative efforts with community groups to further understanding of the concept of access and effective utilization of access channels could be one approach. In fact, cable operators should consider the formation of broad-based democratically constituted groups to advise and assist in policy development, promotion and funding of public access.

Such a group or groups lend valuable assistance, identifying and assisting potential users, helping to generate community interest in the channel, and developing sources of funding.

The cable operator can contribute to the promotion of the access channels through his ongoing advertising and marketing programs. Notice of the availability of access time and programming schedules can be given exposure on non-broadcast channels and by mailing promotional material with monthly bills.

The Educational Access Channel

The broad requirements of the educational access channel are these: (1) At least one must must be made available free of charge from the commencement of cable service until five years after the completion of the basic trunk line; (2) you may not exercise any control over program content (except as mentioned below); (3) you must establish operating rules for the channel. A copy of these rules must be filed with the FCC within 90 days of the date you first activate the channel. A copy of the rules must also be available for inspection by the public.

Operating rules

The FCC requires that the operating rules specify the following four points:

A prohibition on the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office).

A prohibition on lottery information (as in the cablecasting rules).

A prohibition on obscene and indecent matter (as in the cablecasting rules).

Permission of public inspection of a complete record of names and address of all persons or groups requesting time. (This record must be maintained for two years.)

Beyond these broad requirements and the four points mentioned above, you are free to develop further and more detailed operating rules. It is in your interest to establish rules and procedures to promote successful development of the educational channel.

Following is a brief discussion of some of the factors you should consider.

Users

The FCC has specified only that the channel is for use by "local educational authorities". The channel is *not* exclusively for the use of any one group – be it the public or educational broadcaster, a school or other educational group. You will want to determine who are the local educational authorities in your community or franchise area and who are the potential users. Prior to activating the channel, you will want to notify potential users of the channel's availability.

You might consider establishment of a local educational access advisory board composed of, for example, a cable representative, an educational broadcaster, a school board member, a student, and an educational or other public official, etc. This board could advise on what groups may utilize the channel and on time allocations when there are competing applications. You should remember, however, you cannot pass on responsibility for enforcing FCC requirements.

Demand may be difficult to guage at first. You may want to adopt a flexible approach for the first year.

Order of access and time allocations

No requirement exists for first-come, first-served access on the educational channel. At the outset you will probably want to establish a "broadcast day". Order of access (and time allocations) will probably be a function of demand. Establishment of priorities may be possible and wise. For example, in-

structional programming designed as a part of or supplement to school curricula might need to be presented during the school day. Allocation of regular times and days may be advantageous for such programming. If there is a great deal of demand for both regular and one-time or special programs, it may be necessary to establish limits on time allowed per day, week, etc. However, for the near term, that seems unlikely. Access and time decisions should develop according to demand.

Production costs and facilities

You are not required to provide production facilities for the educational channel user. However, in some cases, systems may find they are able to provide such facilities. For example, since systems must have facilities for the public access channel, those same facilities, if not in use, might be used for the educational access channel. The same might be true of regular cablecasting facilities. If systems do provide production facilities, they may charge for use. However, where possible we recommend that charges in this early stage of access development should only be for recovering the actual cost of the service. Rates for such services should be established and published in the operating rules. Since some educational institutions – schools and universities, for example – have production facilities and equipment which are often not fully utilized, cable systems may be able to work out arrangements for use of equipment and facilities.

Copyright

Use of copyrighted material on the educational channel could be a problem for the cable operator. You can and should require appropriate documentation protecting the system from copyright liability. Generally the same information outlined in the public access section should be required.

Funding and promotion of channel

Once the educational channel is activated, a significant factor in its success will be funding to develop software for the channel and promotion of the channel. There are no FCC legal requirements on the operator in these areas. However, operators should be attuned to the need for funds and promotion and should work with educators, community groups, and others in tapping potential sources of funding and in promoting the channel to both users and viewers.

The Government Access Channel

The operation of the government access channel differs markedly from the three other categories of access channels referred to in this report. FCC guidelines on the government access channel are quite general. The commission says the channel is "designed to give maximum latitude for use by local governments". Of the four categories of access channels, the government access channel is the only one in which regulation of access is not precluded.

The FCC's guidance is limited to the following: (1) At least one such access channel must be made available free of charge from the commencement of cable service until five years after the completion of the basic trunk line. (2) The system may exercise no control over program content. (3) Local regulation of the channel is permitted.

Development of this access channel will largely be a concern of the local government. The FCC is not requiring the system to establish operating rules, nor is it requiring the system to make available production facilities. However, we believe that cable operators should assist the local government in setting operating rules; advising, for example, on the establishment of production facilities if utilized.

The Leased Access Channels

After the cable system has met FCC requirements for use of designated non-broadcast channels, it then must make available the remainder of the required band width for leased channel operators. Latitude and flexibility should be key concerns in formulating operating rules for this category of channels.

The FCC has issued the following requirements for leased access service. (1) A system may exercise no control over program content. (2) There are to be no limitations on commercial matter. (3) On at least one leased channel, priority shall be given to part-time users. (4) A broadcast channel blacked-out because of exclusivity rules may be used for leased channel purposes. (5) Unused portions of the specially designated channels (public access, educational, etc.) may be used for leased service, but such service is subject to replacement when a demand exists for the designated use of that channel. (6) The system must establish operating rules. A copy of these rules must be filed with the FCC within 90 days of the date of activation of the

channel. The rules must also be available for public inspection.

Operating Rules

The system in its operating rules must specify the following:

Access shall be first-come, first-served, non-discriminatory.

A prohibition on the presentation of lottery information (as in the cablecasting rules).

A prohibition on obscene or indecent matter (as in the cablecasting rules).

Sponsorship identification (as in the cablecasting rules).

Appropriate rate schedule.

Permission of public inspection of a complete record of the names and addresses of all persons or groups requesting access time. (This record must be maintained for two years.)

Access and allocations

Access to the leased channels must be first-come, first-served. Deadlines for applying for a specified access time will probably not be necessary, at least for the near term. A possible exception to this might be in the case of leased channels for part time users, and also in the case of leasing time on blacked-out broadcast channels. Here deadlines and limitations on the amount of time, time spots, etc. might be appropriate, if demand requires it. Only experience and time will tell.

On all other leased channels there appears to be no need for limitations on time allocations. Supply and demand should be the governing factor here.

Rates

Cable systems must establish rates for channel leasing and include them in the operating rules. Again, flexibility is important. But it will be up to the individual operator to assess his particular situation and develop the appropriate rate schedule. Rates should vary, for example, for full use and part-time use; also, for prime time and non-prime time hours. Different rates might be established for commercial and non-com-

mercial users. Rates should also vary for leased operations on designated access channels and blacked-out broadcast channels.

Production facilities

Operators are not required to provide production facilities for users of leased channel operations. But, as in the case of the educational channel, operators may find they are able to provide these facilities. If this is done, appropriate rates should be established.

Advertising

There are no restrictions on advertising on leased channels (unlike the local origination channel). As the FCC notes, some channels may be used entirely for advertising. The commission has also indicated that it will monitor developments in this area, particularly in regard to issues such as false and misleading advertising. Because cable operators are not allowed any control over program content on designated access channels, generally they cannot control advertising. However, systems can adopt an advertising and merchandising code of ethics (the NCTA cablecasting code of ethics, for example) and acquaint users with the code and request that they conform to it.

Copyright

Generally the same problems that exist with respect to copyright liability for other access channels apply to the leased channels. The steps outlined in previous sections on copyright apply here.